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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/750,160 | 12/29/2000 | Simon Qin | 3667-0102P | 6544 |

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| EXAMINER |
|---|
| LE, DIEU MINH T |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2184 | 4 |

DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. 09/750,160 | Applicant(s) QIN, SIMON | |
|---|---|---|---|
| | Examiner Dieu-Minh Le | Art Unit 2184 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *07 February 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 December 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

**Part III DETAILED ACTION**

***Specification***

1. Claims 1-20 are presented for examination.

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable Ji et al. et al. (US Patent 5,889,943 hereafter

referred to as Ji) in view of Kandasamy et al. (US Patent 5,513,314 hereafter referred to as Kandasamy).

As per claim 1:

Ji substantially teaches the invention. Ji teaches:

- a recovery system for protecting a computer system [abstract, col. 3, lines 8-11 and col. 9, lines 37-68] comprising:

- application layer coupled to an interface and operating predetermined application program [col. 3, lines 13-40 and col. 13, lines 40-65];

- detecting module located within computer system for monitoring a predetermined message [col. 9, lines 20-30 and col. 17, lines 18-32];

- detecting module retrieves message in order to determine whether there is a predetermined harmful data (i.e., virus) [col. 3, lines 25-40].

Ji does not explicitly teach:

- backup data function.

However, Ji does disclose capability of:

- an apparatus and method for electronic mail virus detection and elimination [abstract, fig. 12-15, col. 1, lines 10-20] comprising:

- a connectivity among clients/servers, application program, display, other computing communication devices, etc… [fig. 1-3, col. 5, lines 14 through col. 6, lines 56];

- virus or error detected transmitted between sources and destination or client/server environment [col. 3, lines 18-22, col. 3, lines 55 through col. 4, lines 10, and col. 17, lines 18-32].

- data transferred from one area to another, rename file names, store data files, data configuration setting, etc… (i.e., backup data function) [col. 9, lines 20-66].

In addition, Kandasamy explicitly teaches:

- a fault tolerant NFS server system and mirroring protocol [abstract, fig. 2, col. 3, lines 1-25];

comprising:

**- failure detection and recovery capability [col. 3, lines 32-37];**

**- data retrieval and backup file system [col. 3, lines 38-52].**

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made first, to realize the Ji's apparatus and method for electronic mail virus detection and elimination comprising a connectivity among clients/servers, application program, display, other computing communication devices in supporting virus or error detection and more specifically **data transferred from one area to another, rename file names, store data files, data configuration setting, etc... (i.e., backup data function)** as being the backup data function capability as claimed by Applicant. Since the Ji's apparatus and method for electronic mail virus detection and elimination does deal with the computer error detection and correction, more specifically computer virus or harmful data detection and correction, Ji clearly demonstrated the file rename, file configuration and transmission do provide computer system a continuity operation under new computer configuration or data files (i.e., data backup) environment; second, one would modify the Ji's apparatus and method for electronic mail virus detection and elimination to explicitly including **failure detection and recovery capability and data retrieval and backup file system** as taught by Kandasamy's a fault tolerant NFS server system and mirroring protocol in supporting the in supporting the error and/or virus

detection and correction of the computer system via clients/servers within the computer networking environment.

This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so to provide the error and/or virus detection and correction within a backup/recovery management computer system environment, more specifically to a computer client/server with a mechanism to enhance the computer system performance and processing in ordering to provide a continuity network operating system functionality. It is further obvious because by utilizing this approach, the computer backup/recovery system with error and/or virus detection and correction capabilities within computer system can be realized in:

- first, any error, virus, or failure occurred in a computer system can be identified, detected, corrected via data networking environment;

- second, the computer system can operate with a high reliability and flexibility environment which will correctly provide optimum data availability and connectivity;

- third, the computer system can be thoroughly managed in ensuring the entire fault detection system free of errors, improving the performance, and reducing the risk of data loss.

As per claims 2-4:

Ji substantially teaches the invention. Ji teaches:

- a recovery system for protecting a computer system [abstract, col. 3, lines 8-11 and col. 9, lines 37-68] comprising:

- a connectivity among **clients/servers, application program**, display, other computing communication devices, etc... [fig. 1-3, col. 5, lines 14 through col. 6, lines 56];

- virus or error detected transmitted between sources and destination or client/server environment [col. 3, lines 18-22, col. 3, lines 55 through col. 4, lines 10, and col. 17, lines 18-32].

**- data transferred from one area to another, rename file names, store data files, data configuration setting, etc... (i.e., backup data function) [col. 9, lines 20-66].**

- data communication and controlling via TELNET (i.e., remotely) {col. 7, lines 1-57].

In addition, Kandasamy explicitly teaches:

- a fault tolerant NFS server system and mirroring protocol [abstract, fig. 2, col. 3, lines 1-25];

comprising:

- failure detection and recovery capability via **client/server environment** fig. 4-5, col. 12, lines 1-65 and col. 3, lines 32-37];

- data retrieval and backup file system [col. 3, lines 38-52].

As per claims 5-7:

Ji substantially teaches the invention. Ji teaches:

- a recovery system for protecting a computer system [abstract, col. 3, lines 8-11 and col. 9, lines 37-68] comprising:

- a connectivity among **clients/servers, application program**, display, other computing communication devices, …[fig. 1-3, col. 5, lines 14 through col. 6, lines 56] via **LAN, WAN, Internet (i.e., electronics mails)** , etc…[fig. 4, col. 6, lines 18-56 and col. 13, lines 53-58];

- a communication means comprising electronics mails, TCP/IP, sockets, etc… [fig. 4, col. 8, lines 34-39 and col. 13, lines 53-58];

- harmful data comprising a file in predetermined forms of *.EXE, *.DOC, and *.ZIP [col. 8, lines 59-67 and col. 19, lines 40-51].

In addition, Kandasamy explicitly teaches:

- a fault tolerant NFS server system and mirroring protocol [abstract, fig. 2, col. 3, lines 1-25];

comprising:

- failure detection and recovery capability via **client/server environment** fig. 4-5, col. 12, lines 1-65 and col. 3, lines 32-37];
- data retrieval and backup file system [col. 3, lines 38-52].

As per claims 8-14 and 15-20:

These two sets of method claims are similar to a backup/recovery system for protecting a computer system as described in claims 1-7. Therefore, these claims are also rejected under the same rationale applied against claims 1-7. **In addition, all of the limitations have been noted in the rejection as per claims 1-7.**

## ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. A shortened statutory period for response to this action is set to expired THREE (3) months, ZERO days from the date of this letter. Failure to respond within the period for response will cause the application to be abandoned. 35 U.S.C. 133.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (703) 305-9408. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703)305-9713. The fax phone number for this Group is (703)746-7240.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 746-7239, (for formal communications intended for entry)

**Or:**

(703) 746-7240 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

**DIEU-MINH THAI LE**
**PRIMARY EXAMINER**
**ART UNIT 2184**

DML
8/1/03